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May 10, 2007

Appropriations Policy Brief

H.R. 2206 — U.S. Troops Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act FY 2007

BY THE NUMBERS:

In millions

| | Request | Senate | House | Conference | H.R. 2206 |
|------------------------------------|----------------|----------------|----------------|----------------|---------------|
| GWOT (including Foreign Aid) | 99,620 | 103,981 | 111,303 | 109,295 | 56,517 |
| Misc. (including Hurricane Relief) | 3,400 | 13,236 | 7,878 | 10,010 | 10,037 |
| SCHIP Shortfall Funding | 0 | 448 | 463 | 393 | 393 |
| Minimum Wage/Tax Relief | NA | NA | NA | NA | NA |
| Total | 103,020 | 117,665 | 119,644 | 119,698 | 66,947 |

Note: The significant difference in the funding level in H.R. 2206 (as reflected in the table above) versus the funding level for previous House-passed supplementals, is due to the fact that CBO does not score the approximately \$52.8 billion in *conditional* GWOT funding—since this funding would require an act of Congress in order for the money to be spent. Thus, CBO does not reflect such funding in its tables.

Budget Compliance: H.R. 2206 designates the entire amount of funding as some form of an emergency to avoid the constraints of the FY 2007 budget resolution, with its \$873 billion discretionary cap. It does so in two respects: First, the bill designates the amounts in Title I (funding for military operations in Iraq and Afghanistan) and Title II (other International and Security-related funding) as funds directly related to the Global War on Terror. Section 402 of H.Con.Res. 376 (the FY 2007 budget resolution, which the Majority deemed until the passage of the FY 2008 budget resolution) provides a broad exemption for spending that funds “contingency operations directly related to the global war on terrorism, and other unanticipated defense-related operations.”

Second, the bill designates the rest of the funding as an “emergency” to similarly avoid budget restrictions. However, H.Con.Res. 376 included a limit on spending for domestic emergencies. This “rainy day fund,” inserted at the behest of the RSC, caps this type of spending at \$6.45 billion. H.R. 2206 and H.R. 2207 (the agricultural assistance supplemental) combined—with perhaps \$14.9 billion in such emergency funding—exhausts this fund and thus violates the budget resolution by roughly \$8.45 billion. As a result, since the Budget Committee did NOT meet in open session and increase the amount of funding in the reserve fund, the bill would be subject to a point of order on the floor for violating the Budget Act. Unfortunately, the point of order is waived by the rule. In addition, most of these “emergencies” do not meet the budget’s criteria for such spending (sudden, unforeseen, temporary, urgent, etc.), causing many conservatives to conclude that the Appropriations Committee is utilizing a major gimmick to avoid budget restraints.

PAYGO Compliance: According to the Budget Committee (Minority), H.R. 1591 (the prior supplemental, recently vetoed) included \$5.8 billion over eleven years in new entitlement spending that was not paid for with compensating offsets. The provisions in H.R. 2206 and H.R. 2207 (the agriculture assistance supplemental) that impact direct spending or federal revenue are similar to, or identical to, the conference report for H.R. 1591.

Earmark Disclosure: A statement inserted in the Congressional Record states that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

Funding for Military Operations in Iraq and Afghanistan (Title I):

In millions

| Department of Defense | Request | Senate | House | Conference | H.R. 2206 |
|--|----------------|---------------|--------------|-------------------|----------------------|
| Military Personnel | 12,145 | 13,435 | 13,566 | 13,508 | 7,241 |
| Operations & Maintenance | 50,316 | 48,784 | 52,499 | 50,430 | 29,249 |
| <i>Afghanistan Security Fund</i> | 5,906 | 5,906 | 5,906 | 5,906 | 2,953 |
| <i>Iraq Security Fund</i> | 3,842 | 3,842 | 3,842 | 3,842 | 1,921 |
| <i>Iraq Freedom Fund</i> | 206 | 456 | 156 | 356 | |
| <i>Joint Improvised Explosive Device Defeat Fund</i> | 2,433 | 2,433 | 2,433 | 2,433 | 1,216 |
| <i>Strategic Reserve Readiness Fund</i> | 0 | 0 | 2,500 | 2,000 | 0 |
| Procurement | 24,900 | 24,508 | 24,814 | 25,592 | 3,008 |
| R&D, Test & Evaluation | 1,448 | 1,190 | 1,035 | 1,099 | 0 |
| Defense Working Capital Fund | 1,316 | 1,321 | 1,316 | 1,321 | 0 |
| Drug Interdiction & Counter Drug Activities | 259 | 255 | 259 | 255 | 0 |
| Intelligence Community Management Account | 67 | 72 | 57 | 72 | 0 |
| Defense Health Program | 1,073 | 2,467 | 2,790 | 3,252 | 3,252 |
| National Defense Sealift Fund | 5 | 5 | 5 | 5 | 0 |

Conditional Funding for Military Operations in Iraq and Afghanistan (Title I):

In millions

| Department of Defense | Request | Senate | House | Conference | H.R. 2206 |
|----------------------------------|----------------|---------------|--------------|-------------------|----------------------|
| Military Personnel | 12,145 | 13,435 | 13,566 | 13,508 | 6,292 |
| Operations & Maintenance | 50,316 | 48,784 | 52,499 | 50,430 | 21,154 |
| <i>Afghanistan Security Fund</i> | 5,906 | 5,906 | 5,906 | 5,906 | 2,953 |
| <i>Iraq Security Fund</i> | 3,842 | 3,842 | 3,842 | 3,842 | 1,921 |

| | | | | | |
|--|--------|--------|--------|--------|--------|
| <i>Iraq Freedom Fund</i> | 206 | 456 | 156 | 356 | 356 |
| <i>Joint Improvised Explosive Device Defeat Fund</i> | 2,433 | 2,433 | 2,433 | 2,433 | 1,216 |
| <i>Strategic Reserve Readiness Fund</i> | 0 | 0 | 2,500 | 2,000 | 2,000 |
| Procurement | 24,900 | 24,508 | 24,814 | 25,592 | 22,583 |
| R&D, Test & Evaluation | 1,448 | 1,190 | 1,035 | 1,099 | 1,099 |
| Defense Working Capital Fund | 1,316 | 1,321 | 1,316 | 1,321 | 5 |
| Drug Interdiction & Counter Drug Activities | 259 | 255 | 259 | 255 | 255 |
| Intelligence Community Management Account | 67 | 72 | 57 | 72 | 72 |
| Defense Health Program | 1,073 | 2,467 | 2,790 | 3,252 | 0 |
| National Defense Sealift Fund | 5 | 5 | 5 | 5 | 5 |

Iraq Policy Section:

Note: Language in this section is the same as that in the conference report of the original Supplemental, except where noted.

Mission Capable Units in Iraq: Prohibits funds from being used to deploy any unit of the Armed Forces to Iraq, unless the chief of the military department concerned has certified in writing to Congress at least 15 days in advance of the deployment that the unit is “fully mission capable” (“capable of performing assigned mission essential tasks to prescribed standards under the conditions expected in the theater of operations, consistent with the guidelines set forth in the Department of Defense readiness system”).

Deployment Time in Iraq: Prohibits funds from being used to initiate the development of, continue the development of, or the execution of any order that has the effect of extending the deployment or redeployment for Operation Iraqi Freedom in violation of a 365-day maximum (for the Army, Army Reserve, and the National Guard) or a 210-day maximum (for the Marines and Marine Reserves).

Presidential Report on Benchmarks: Requires that the President report to Congress by July 13, 2007, detailing:

- “the progress the Government of Iraq has made in—
 - giving the United States Armed Forces and Iraqi Security Forces the authority to pursue all extremists, including Sunni insurgents and Shiite militias;
 - delivering necessary Iraqi Security Forces for Baghdad and protecting such Forces from political interference;
 - intensifying efforts to build balanced security forces throughout Iraq that provide even-handed security for all Iraqis;
 - ensuring that Iraq’s political authorities are not undermining or making false accusations against members of the Iraqi Security Forces;
 - eliminating militia control of local security;
 - establishing a strong militia disarmament program;

- ensuring fair and just enforcement of laws;
 - establishing political, media, economic, and service committees in support of the Baghdad Security Plan;
 - eradicating safe havens;
 - reducing the level of sectarian violence in Iraq; and
 - ensuring that the rights of minority political parties in the Iraqi Parliament are protected; and
- “whether the Government of Iraq has—
- enacted a broadly accepted hydro-carbon law that equitably shares oil revenues among all Iraqis;
 - adopted legislation necessary for the conduct of provincial and local elections, taken steps to implement such legislation, and set a schedule to conduct provincial and local elections;
 - reformed current laws governing the de-Baathification process to allow for more equitable treatment of individuals affected by such laws;
 - amended the Constitution of Iraq consistent with the principles contained in article 137 of such Constitution; and
 - allocated and begun expenditure of \$10 billion in Iraqi revenues for reconstruction projects, including delivery of essential services, on an equitable basis.”

If such report is not filed on time, emergency funding under Title I, Chapter 2 of this legislation (a variety of military funding accounts) could not be obligated.

NOTE: The conference report of the original Supplemental included essentially the same benchmarks and required a certification date of July 1, 2007 (as opposed to the July 13, 2007 report date in the new legislation). In neither piece of legislation are such key terms as “intensifying efforts” or “fair and just enforcement” defined.

Congressional Approval Resolution and Withdrawal from Iraq: In order for Title I, Chapter 2 funding to be obligated past July 13, 2007, in addition to the on-time filing of the required report above, Congress would also have to affirmatively approve the continued funding. This joint resolution of approval, which would have to be signed into law, would be structured as follows:

- The resolution would have to be introduced by the Appropriations Committee Chairman in either the House or Senate on the first legislative day following the filing of the above presidential report.
- The resolution could only read: “That the Congress approves the obligation and expenditure of funds provided by chapter 2 of title I of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.”
- The resolution would not be amendable in committee of either body.
- Each appropriations committee would have four legislative days to report the resolution, otherwise the resolution would automatically be placed on the calendar of each body.

- In the House, the resolution would be considered (within two legislative days of being reported from committee or of the committee being discharged) under a modified closed rule, allowing no amendment except one to restrict Iraq funding only to troop withdrawal from Iraq within 180 days of the joint resolution's enactment, diplomatic services, limited actions against al-Qaeda and other terrorist organizations, and training and equipping Iraqi Security Forces.
- In the Senate, any senator could move to proceed to the consideration of the resolution (immediately upon being reported from committee or the committee being discharged). The motion would not be amendable, and no motion to postpone, reconsider, and proceed to other business would be in order. There would be a minimum five hours of debate, and no amendment to the joint resolution would be in order. A vote on final passage would have to occur.
- If the House passed a joint resolution before the Senate, the Senate would have to take up the House resolution.

NOTE: The conference report of the original Supplemental contained a two-tiered withdrawal date of October 1, 2007 (if the President did not certify one aspect of progress), and March 1, 2008 (if the President certified progress on all benchmarks). The original Supplemental contained no provisions for a joint resolution of approval. This new Supplemental, unlike the conference report for the original Supplemental, contains no language prohibiting a return to Iraq or requiring the Multinational Forces Commander in Iraq and the U.S. Ambassador to Iraq to jointly report to Congress every 60 days on the current progress being made by the Government of Iraq

Possible Conservative Concerns: Some conservatives might be concerned that this legislation would undermine the constitutional authority of the President as Commander-in-Chief. Furthermore, some conservatives might be concerned that this bill would give strength to our enemy by showing American weakness and encouraging our enemy to either wait until after the deadlines and congressional action on an approval resolution in this Supplemental to launch more attacks and/or to focus their current attacks on ensuring that one or more of the benchmarks required for the presidential report are not met.

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Other Items of Note:

Transfer of Funds: Allows the Secretary of Defense to transfer up to \$3.5 billion of the funds made available to the Department of Defense upon his determination that it is in the national interest to do so. During FY 2007, the Secretary of Defense may also transfer \$6.3 billion of the amounts credited to Defense Cooperation Account.

Counter-Drug Activities in Afghanistan/Pakistan: Limits the amount of funding for counter-drug activities for Afghanistan and Pakistan to \$60 million.

Commander's Emergency Response Program: Provides \$456 million for the Commander's Emergency Response Program to allow military commanders in Iraq and Afghanistan to respond to urgent humanitarian and reconstruction needs.

Military Bases in Iraq: Prohibits use of funds to establish permanent bases for U.S. military personnel in Iraq or to exercise U.S. control over any oil resource of Iraq .

Torture Prohibition: Prohibits the use of funds to negate a series of laws and regulations promulgated to implement the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Inspection of Military Medical Treatment Facilities and Military Housing: Requires the Secretary of Defense to inspect each military medical/housing facility to ensure that the facility meets acceptable standards.

Assistance to Government of Iraq to Support Disarmament: Allows \$156 million of funding provided for Iraq Security Forces Fund to be used to provide assistance to the government of Iraq to support the "disarmament, demobilization, and reintegration of militias and illegal armed groups."

Transfer of Funds to Military Construction: Transfers \$6 million from the FY 2006 Defense Appropriations bill to the Military Construction account for the Army.

Transfer of Funds to Pakistan: Allows up to \$110 million to be transferred from other sections of the bill to support programs in Pakistan.

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Other International and Security-Related Funding (Title II):

In millions

| Department of Homeland Security | Request | Senate | House | Conference | H.R. 2206 |
|---|----------------|---------------|--------------|-------------------|------------------|
| Departmental Management & Operations | 0 | 0 | 35 | 15 | 15 |
| Customs and Border Protection | 0 | 140 | 100 | 115 | 115 |
| Air & Marine Interdiction | 0 | 75 | 150 | 120 | 120 |
| US Immigration and Customs Enforcement, Salaries and Expenses | 0 | 20 | 0 | 10 | 10 |
| Transportation Security Administration | 0 | 660 | 1,250 | 970 | 970 |
| Federal Air Marshals | 0 | 15 | 0 | 8 | 8 |
| Infrastructure Protection & Information Security | 0 | 18 | 25 | 37 | 37 |

| | | | | | |
|---|-----|-----|-----|-----|-----|
| Office of Health Affairs | 0 | 18 | 0 | 15 | 15 |
| FEMA, Salaries & Expenses | 0 | 20 | 25 | 25 | 25 |
| FEMA, State and Local Programs | 0 | 850 | 415 | 553 | 553 |
| FEMA, Emergency Management Performance | 0 | 100 | 100 | 100 | 100 |
| US Citizenship and Immigration Services | 0 | 30 | 0 | 10 | 10 |
| Science and Technology, Research, Development, Acquisition, and Operations | 0 | 15 | 0 | 10 | 10 |
| Domestic Nuclear Detection Office, Research, Development and Operations | 0 | 39 | 0 | 39 | 39 |
| Domestic Nuclear Detection Office, Systems Acquisition | 0 | 0 | 400 | 224 | 224 |
| Department of Energy | | | | | |
| Defense Nuclear Nonproliferation | 63 | 63 | 150 | 150 | 150 |
| Department of Justice | | | | | |
| General Legal Activities, Salaries & Expenses | 4 | 4 | 2 | 2 | 2 |
| U.S. Attorneys, Salaries & Expenses | 5 | 13 | 5 | 5 | 5 |
| U.S. Marshals, Salaries & Expenses | 15 | 33 | 3 | 6 | 6 |
| National Security Division | 2 | 2 | 2 | 2 | 2 |
| FBI, Salaries & Expenses | 118 | 348 | 118 | 268 | 268 |
| Drug Enforcement Administration | 8 | 25 | 8 | 12 | 12 |
| Bureau of Alcohol, Tobacco, Firearms, and Explosives, Salaries and Expenses | 4 | 4 | 4 | 4 | 4 |
| Federal Prison System | 17 | 17 | 17 | 17 | 17 |
| Legislative Branch | | | | | |
| House of Representatives, Salaries & Expenses | 0 | 0 | 6 | 6 | 6 |
| Department of State | | | | | |
| Diplomatic and Consular Affairs | 913 | 816 | 967 | 871 | 871 |
| Inspector General | 35 | 37 | 47 | 37 | 37 |
| Education and Cultural Exchange Programs | 20 | 10 | 20 | 20 | 20 |
| International Organizations Contributions to International Organizations | 0 | 59 | 0 | 50 | 50 |
| International Peacekeeping Activities | 200 | 200 | 288 | 288 | 288 |

| | | | | | |
|--|---------|--------|-------|------------|-------|
| International Broadcasting Operations | 10 | 10 | 10 | 10 | 10 |
| Bilateral Economic Assistance, Child Survival and Health Programs Fund | 0 | 161 | 161 | 161 | 161 |
| International Disaster and Famine Assistance | 0 | 187 | 135 | 165 | 165 |
| US Agency for International Development, Operating Expenses | 0 | 6 | 11 | 9 | 9 |
| US Agency for International Development Office of Inspector General | 0 | 4 | 4 | 4 | 4 |
| Economic Support Fund | 3,025 | 2,602 | 2,953 | 2,649 | 2,649 |
| Assistance for Eastern Europe | 279 | 214 | 239 | 229 | 229 |
| Department of State Democracy Fund | 0 | 465 | 0 | 260 | 260 |
| International Narcotics Control | 260 | 210 | 335 | 257 | 257 |
| Migration and Refugee Assistance | 72 | 143 | 112 | 131 | 131 |
| U.S. Emergency Refugee & Migration Assistance | 30 | 55 | 35 | 55 | 55 |
| Nonproliferation, Antiterrorism, & Demining | 28 | 28 | 88 | 58 | 58 |
| Department of Treasury | | | | | |
| International Affairs Technical Assistance | 3 | 3 | 3 | 3 | 3 |
| Funds Appropriated to the President | | | | | |
| Foreign Military Financing Program | 220 | 220 | 260 | 265 | 265 |
| Peacekeeping Operations | 278 | 323 | 225 | 230 | 230 |
| Military Construction | 1,854 | 4,914 | 4,916 | 4,806 | 4,806 |
| <i>DoD Base Closure Account</i> | 0 | 3,136 | 3,136 | 3,136 | 3,136 |
| Department of Agriculture | Request | Senate | House | Conference | |

Note: In addition to funding in the table above, a self-executing amendment (to be added to the bill upon adoption of the rule), adds \$460 million for PL-480 Title II grants and \$40 million for the Bill Emerson Humanitarian Trust. Both funding levels are the same as the conference report for H.R. 1591.

Items of Note:

Transfer of Funds: Allows the Administrator of the National Nuclear Security Administration to transfer up to \$1 million from Defense Nuclear Nonproliferation to the Office of the Administrator during FY 2007.

Transportation Security Administration (TSA), Aviation Security: Of the \$970 million for TSA, \$815 million is for procurement and installation of checked baggage explosives detective systems, \$45 million is for expansion of checkpoint explosives detection pilot systems, and \$110 million is for air cargo security.

FEMA, State and Local Programs: Of the \$553 million for FEMA (State and Local Programs) \$190 million is for port security grants, \$325 million is for intercity rail passenger transportation, \$35 million is for regional grants and regional technical assistance to high risk urban areas for catastrophic event planning and preparedness, and \$2.5 million is for technical assistance.

Base Realignment and Closure Funding: Provides \$3.1 billion for the Base Realignment and Closure Account to fulfill the Administration's FY07 request. The omnibus appropriations bill (H.J.Res. 20) provided \$2.5 billion for such needs. However, some conservatives may be concerned that all of this funding should have been provided in the omnibus bill, where it would have been subject to budget constraints. Instead, the Appropriations Committee delayed this funding to the supplemental, freeing up dollars within the budget for lesser priorities.

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Hurricane Relief (Title III):

In millions

| Department of Commerce | Request | Senate | House | Conference | |
|--|----------------|---------------|--------------|-------------------|-------|
| NOAA, Operations, Research, & Facilities | 0 | 166 | 120 | 110 | 110 |
| NASA, Exploration Capabilities | 0 | 0 | 35 | 35 | 35 |
| Department of Justice | | | | | |
| Office of Justice Programs | 0 | 170 | 0 | 50 | 50 |
| Department of Defense | | | | | |
| Army Corps of Engineers | 0 | 1,558 | 1,337 | 1,433 | 1,433 |
| Small Business Administration | | | | | |
| Disaster Loan Program Account | 0 | 25 | 25 | 25 | 25 |
| Department of Homeland Security | | | | | |
| FEMA, Disaster Relief Fund | 3,400 | 4,310 | 4,310 | 4,610 | 4,610 |
| Department of the Interior | | | | | |
| Historic Preservation Fund | 0 | 15 | 0 | 10 | 10 |
| Department of Education | | | | | |
| Hurricane Education Recovery | 0 | 30 | 30 | 30 | 30 |
| Higher Education | 0 | 30 | 30 | 30 | 30 |
| Department of Transportation | | | | | |

| | | | | | |
|--|---|-----|----|-----|-----|
| Federal Aid Highways, Emergency Relief Program | 0 | 389 | 0 | 683 | 683 |
| Federal Transit Administration, Formula Grants | 0 | 75 | 0 | 35 | 35 |
| Department of HUD | | | | | |
| Inspector General | 0 | 5 | 10 | 7 | 7 |

Items of Note:

Corps of Engineers: Provides \$1.4 billion to Corps of Engineers for continued repairs on the levee system in New Orleans.

Small Business Administration: Provides \$25 million to the SBA for additional funding to carry out the Disaster Loan Program.

FEMA: Provides \$4.6 billion for disaster relief at the Federal Emergency Management Agency (FEMA), of which \$4 million is to be transferred to the Office of the Inspector General. The bill extends from 12 months to 24, the time frame in which FEMA can provide funds to pay for utility costs resulting from the provision of temporary housing unties to Hurricane Katrina evacuees. In addition, the supplemental would eliminate the state and local matching requirements for certain FEMA assistance (in connection with Hurricanes Katrina, Rita, Wilma, and Dennis) in the states of Alabama, Louisiana, Mississippi, Texas, and Florida, and provides that the federal portion of these costs will be 100%.

K-12 Education Funding for Hurricane States: Provides \$30 million to Louisiana, Mississippi, and Alabama for recruiting and compensating teachers and principals in schools affected by Hurricanes Katrina and Rita, for the implementation of “high-quality formative assessments,” and the “establishment of partnerships with nonprofit entities with a demonstrated track record in recruiting and retaining outstanding teachers and other school leaders.”

Higher Education Funding for Hurricane States: Provides \$30 million in assistance to institutions of higher education located in a disaster area related to the 2005 Gulf of Mexico Hurricanes.

Federal Highway Administration Rescission: Rescinds \$683 million from unused highway spending.

NASA: Provides \$35 million to NASA, under the “exploration capabilities” account, for “expenses related to the consequences of Hurricane Katrina.” The bill also provides that of the amounts previous appropriated to NASA, \$48 million may be used to reimburse hurricane-related costs incurred by NASA in FY 2005.

Office of Inspector General: Provides \$7 million for the Office of Inspector General for “necessary expenses related to the consequences of Hurricane Katrina and Rita.”

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Other Emergency Appropriations (Title IV):

In millions

| | Request | Senate | House | Conference | |
|--|----------------|---------------|--------------|-------------------|-----|
| Corps of Engineers | 0 | 3 | 0 | 3 | 12 |
| Flood Control and Coastal Emergencies | 0 | 150 | 0 | 150 | 153 |
| Water and Related Resources, Interior | 0 | 18 | 0 | 18 | 18 |
| Fish & Wildlife Services, Interior | 0 | 7 | 7 | 7 | 7 |
| National Park Service, Interior | 0 | 1 | 1 | 1 | 1 |
| U.S. Geological Survey, Interior | 0 | 5 | 5 | 5 | 5 |
| Forest Service | 0 | 12 | 0 | 12 | 12 |
| CDC | 0 | 17 | 0 | 63 | 63 |
| LIHEAP | 0 | 640 | 400 | 400 | 400 |
| Public Health & Social Services Fund (Avian Flu) | 0 | 820 | 970 | 625 | 625 |
| Covered Countermeasure Process Fund | 0 | 50 | 50 | 25 | 25 |
| Architect of the Capitol | 0 | 25 | 50 | 50 | 50 |
| Capitol Police , Radio Modernization | 0 | 0 | 0 | 0 | 15 |
| VA, Medical Services | 0 | 454 | 415 | 467 | 467 |
| VA, Medical Administration | 0 | 250 | 256 | 250 | 250 |
| VA, Medical Facilities | 0 | 595 | 595 | 595 | 595 |
| VA, Medical and Prosthetic Research | 0 | 30 | 35 | 33 | 33 |
| VA, Departmental Administration | 0 | 46 | 62 | 83 | 83 |
| VA, Information Technology Systems | 0 | 36 | 35 | 35 | 35 |
| VA, Construction Minor Projects | 0 | 356 | 260 | 326 | 326 |

Items of Note:

LIHEAP: Provides \$400 million for the Low-Income Home Energy Assistance Program (LIHEAP).

Avian Flu: Provides \$625 million for the Department of HHS to continue to prepare and respond to an avian flu pandemic. The money is to be used for “activities including the

development and purchase of vaccine, antivirals, necessary medical supplies, diagnostics, and other surveillance tools.”

H5N1 Vaccine Compensation: Provides \$25 million to compensate individuals for injuries caused by the H5N1 vaccine, which is a flu vaccine.

Capitol Power Plant: Provides \$50 million to the Capitol Power Plant for asbestos abatement and safety improvements.

Capitol Police Radio Modernization: Provides \$15 million for a radio modernization program for the Capitol Police.

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Other Matters (Title V):

| <i>In millions</i> | | | | | |
|---|----------------|---------------|--------------|-------------------|----------------------|
| | Request | Senate | House | Conference | H.R. 2206 |
| Farm Service Agency | 0 | 75 | 48 | 38 | 38 |
| Office of Federal Housing Enterprise Oversight | 0 | 5 | 8 | 6 | 6 |

Items of Note:

FDA Office of Women’s Health: Provides \$4 million for the Office of Women’s Health at the Food and Drug Administration.

Rescinding Homeland Security Funding: Rescinds \$31 million in funding from the FY 2006 Homeland Security bill.

Payment to Widow of Rep. Norwood: Provides \$165,200 to Gloria W. Norwood, the widow of former Rep. Charlie Norwood (R-GA) who passed away last month. In the Emergency Supplemental Appropriations Act of 2005 (H.R. 1268), Congress provided \$162,100 to Doris Matsui, the widow of former Rep. Robert Matsui.

NTSB Lease: Amends a provision in the continuing resolution, which provided \$78.9 million for the National Transportation Safety Board, Salaries and Expenses, to “include amounts necessary to make lease payments due in FY 2007 on an obligation incurred in 2001 under a capital lease.”

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SCHIP Funding (Title VI):

SCHIP: Provides “such funding, but not to exceed.” \$650 million to the Secretary of HHS to provide assistance to the SCHIP “shortfall states” (see list below), in the form of an amount “as the Secretary determines will eliminate the estimated shortfall.” The Majority has indicated they intend the funding to be a one-time appropriation and not direct spending included in a supplemental to contravene the Majority’s own PAYGO rules. However, the use of an emergency designation for this type of spending may be unprecedented—RSC staff has found no instance where Medicare, Medicaid, and SCHIP have been designated as an emergency. (CBO previously scored this provision as costing \$393 million because of the way the program interacts with Medicaid).

The State Children’s Health Insurance Program (SCHIP) is a block grant provided to states for health care coverage for low-income children in families with income above Medicaid eligibility levels. States receive a fixed federal contribution, which is intended to last for three years, and any unused funds at the end of that time period are redistributed to states that have used the entire grant. Some states experience a “shortfall” in funding, in light of decisions to insure adults, pregnant mothers, and children from families with significantly more income than the poverty level (350% in one state). According to a 2006 CRS report, the following 14 states will likely have a shortfall in FY 2007: Alaska, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, Rhode Island, and Wisconsin.

CMS Regulations: Prohibits the Secretary of Health and Human Services from implementing a proposed regulation related to SCHIP and Medicaid that would limit Medicaid payments for graduate medical education to hospitals.

Tamper-Resistant Prescription Pads: Prohibits Medicaid payments for amounts expended for covered outpatient drugs, unless the prescription is in written form on a tamper-resistant pad. Also, extends the Pharmacy Plus waiver, that allows states to seek waivers of federal Medicaid law and regulations under certain circumstances. According to the Joint Explanatory Statement, these provisions are intended to “offset the cost of blocking the Medicaid rules” outlined above.

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Minimum Wage/Tax Provisions (Title VII):

Minimum Wage Increase: Mandates that employers give some of their employees a 41% raise over two years. Specifically, the federal minimum wage would increase from \$5.15-per-hour to \$7.25-per-hour over two years. The minimum wage would first increase to \$5.85 sixty days after this bill’s enactment, then to \$6.55 one year after the first increase, then to \$7.25 one year after the second increase. **Yields \$16.5 billion in private-sector costs over five years.**

American Samoa and Northern Mariana Islands: Applies a federal minimum wage to the Commonwealth of the Northern Mariana Islands AND American Samoa and increases it steadily until it matches the new \$7.25 mandate for the 50 states. The remaining U.S. territories would remain fully or partially exempt from the minimum wage, as under current law. It is unclear why the Mariana Islands and American Samoa would be given harsher treatment than the other U.S. territories.

Assessment Report: Requires the Secretary of Labor, beginning 26 months after enactment of this legislation, to study the impact of wage increases required by this legislation and project the future impact on American Samoa and the Northern Mariana Islands.

NOTE: The minimum wage provisions are essentially the same as those in the conference report for the original Supplemental, except that this new bill applies the federal minimum wage to American Samoa and contains a reporting requirement.

To see the RSC Legislative Bulletin on H.R. 2, which includes more background on the minimum wage and conservative opposition to it, visit this webpage:

http://www.house.gov/hensarling/rsc/doc/LB_011007_minwage100hour.doc.

Work Opportunity Tax Credit (WOTC): Extends the expiration date for the WOTC (currently the end of 2007) to August 31, 2011, and expands its application. The WOTC allows employers to claim the maximum \$2,400 credit when they hire individuals from nine “target” groups—such as families receiving public assistance, high-risk youths, ex-felons, qualified veterans, and food stamp recipients age 18-39.

Section 179 Expensing: Extends the sunset date for one year (from the end of 2009 to the end of 2010) for the expanded Section 179 expensing provisions in current law. Presently, small businesses may expense—i.e., deduct in the first year—up to \$112,000 of certain asset investments, phasing out dollar-for-dollar to the extent the business’ annual investments exceed \$450,000. This provision would also immediately increase the \$112,000 and \$450,000 thresholds to \$125,000 and \$500,000, and index them for inflation through and including 2010. After 2010, the expensing limit will decline to \$25,000 and the phase-out threshold will decline to \$200,000.

Restaurant Tip Credit: Extends the restaurant tip credit at the current level of \$5.15 per hour. For tipped employees, the Fair Labor Standards Act (FLSA) provides that the \$5.15-per-hour minimum wage may be reduced to \$2.13, if the combination of tips and cash income equals the federal minimum wage. Employers still have to pay taxes (under the Federal Insurance Contributions Act--FICA) on tip income of their employees. A business tax credit is provided equal to an employer’s FICA taxes paid on tips in excess of those treated as wages for purposes of meeting the minimum wage requirements of FLSA. If this provision were not included in the bill, restaurants would not be able to claim the tip credit on payroll taxes paid for tipped employees on income between \$5.15 and a new higher hourly minimum wage.

Credits against the Alternative Minimum Tax (AMT): Allows the Work Opportunity Tax Credit and the restaurant tip credit to offset tax liability under the AMT beginning in tax-year 2007. Generally, business tax credits cannot be used to offset any liability under the AMT.

Self-Employment Taxes of Married Couples: Allows a qualified joint venture, whose only members are a husband and wife filing a joint return, not to be treated as a partnership for tax purposes (as they currently are required to do).

Section 179 Expensing in the GO Zone: Extends by one year (through the end of 2008) the increased section 179 small business expensing for qualified property in the Gulf Opportunity (GO) Zone.

Housing Credits in GO Zone: Extends the increased cap on special GO Zone low-income housing credits, which had been implemented for the hurricane-affected states for 2006 through 2008, for two years (through the end of 2010). Also extends the GO Zone's designation as a "difficult to develop area" through the end of 2010—which has implications for increasing the amount of credits available for investors in projects in the area.

CDBG Housing Projects: Allows low-income (Community Development Block Grant—CDBG) housing projects to receive additional categories of federally-subsidized loans without facing a reduction in tax credits. Under current law, low-income housing projects that receive certain federally-subsidized loans must either accept a lower credit rate or make an offsetting reduction in the property's basis.

Mortgage Revenue Bonds: Allows the proceeds of Mortgage Revenue Bonds to be used to refinance an existing mortgage, if repairs or reconstruction costs total at least 25% of the owner's adjusted basis in the property. Generally, current law does not allow the proceeds of Mortgage Revenue Bonds to be used to refinance existing mortgages.

State and Local Implementation: Directs the Comptroller General to report to Congress on the practices employed by state and local governments in allocating and using tax incentives provided by this bill and the Gulf Opportunity Zone Act of 2005.

S Corporations: Provides nearly \$900 million over eleven years of tax-relief provisions for S Corporations (a certain class of small corporations), such as removing the capital gains of S Corporations from the definition of passive investment income for tax purposes and eliminating all earnings and profits attributable to years before 1983 for S Corporations.

Capital Gains Tax Rate for Certain Minors and Adults: Beginning in tax-year 2007, taxpayers would be denied the lowest maximum capital gains and dividends tax rate—5% in 2007, 0% in 2008, 0% in 2009, 0% in 2010, and 8% or 10% thereafter—if they are under age 19 (age 24, in the case of a student) and if their earned income is less than half of their financial support (i.e., if they are more than 50% dependent on their family's financial support).

Extends the suspension of interest payments due to the IRS: Beginning six months after this legislation’s enactment, taxpayers who underpay their taxes and are subject to interest penalties on the unpaid amounts would not have their interest payments suspended until 36 months after the IRS has failed to contact the taxpayers about the underpayments—as opposed to the current-law 18 months.

Collection Due Process Procedures: Changes the “collection due process procedures” with regards to employment tax liabilities. Currently, the IRS is allowed to seize a taxpayer’s physical property given a federal tax lien for underpayments of employment taxes. Prior to seizing the property, however, the IRS has to notify the taxpayer that they have a right to a collection due process (CDP) hearing. This bill would allow the IRS to seize property without *first* giving the taxpayer a CDP hearing—but only for taxpayers who have already requested a CDP hearing within the prior two years. Taxpayers who have NOT requested a CDP hearing within the prior two years would NOT be subject to the new requirements allowing pre-hearing seizures of property. The IRS would still have to send warning notices, and the hearing would still have to be offered—but not necessarily before the property seizure.

IRS User Fees: Makes IRS user fees—such as fees for opinion letters or determination letters—permanent.

Bad Checks and Money Orders: Increases the fee on sending checks and money orders to the IRS that are “not duly paid.” Currently, the fee for providing a bad check or money order to the IRS is 2% of the amount of such check; except that if the amount of such check is less than \$750, the penalty is \$15 or the amount of such check, whichever is the lesser. This provision would raise the threshold for the lesser fee from \$750 to \$1,250 and would raise the \$15 figure to \$25.

Expanded Penalties for Return Preparers: Expands and increases the penalties for tax return preparers who understate a taxpayer’s liability (because of unreasonable positions that could not be sustained on their merits, reckless or intentional disregard for the law, or willful intent to understate tax liability) on all types of tax returns, such as those for nonprofit entities, estate taxes, and employment taxes—not just income taxes, as under current law.

Erroneous Refund Claim Penalty: Creates a new civil penalty for making an unreasonable, excessive claim for an income tax refund (excluding the Earned Income Tax Credit). The penalty would be 20% of the excessive amount—i.e., the amount above the proper refund.

Corporate Estimated Tax Shifts: Increases the corporate estimated tax payments due in the summer of FY2012 for corporations with assets of at least \$1 billion. This provision does not yield a net tax increase; it merely requires a higher quarterly payment of corporate estimated taxes in the summer of 2012, and a correspondingly lowered estimated payment thereafter. Under current law, the estimated payments due in the summer of FY2012 have to be 106.25% of what would otherwise be paid (100% = one quarter of the year’s

estimated tax payment due). This provision of the Supplemental would increase that amount from 106.25% to 114.25%, requiring businesses to pay even more of their taxes early.

NOTE: These tax provisions are identical to those in the conference report for the original Supplemental.

Additional Background: Most of the above provisions have already passed the House in this exact, or similar, format. For more information on these provisions, as they were included in other legislation, see:

- The RSC Legislative Bulletin on H.R. 976:
http://www.house.gov/hensarling/rsc/doc/LB_021607_smallbiztax.doc
- The RSC Legislative Bulletin on H.R. 1562:
http://www.house.gov/hensarling/rsc/doc/LB_032707_KatrinaTaxAmended.doc
- The RSC Legislative Bulletin on H.R. 1591:
http://www.house.gov/hensarling/rsc/doc/LB_032207_IraqSuppUpdated.doc
- The RSC Legislative Bulletin on H.R. 1677:
http://www.house.gov/hensarling/rsc/doc/LB_041707_suspensions.doc.

Possible Conservative Concerns: Some conservatives might be concerned that the federal minimum wage itself is anti-capitalist, since it prevents an employer and a potential employee from engaging in free-market labor negotiations. Furthermore, quickly-increased labor costs unrelated to business conditions will encourage or force employers to fire employees, reduce working hours for existing employees, and/or postpone plans to hire additional employees. Conservatives may also be concerned with the pace of this increase, **which would mandate that employers give certain employees a 41% raise over two-plus years, yielding \$18 billion (according to CBO) in intergovernmental and private-sector costs over five years—which is not nearly offset by the tax relief paired with the minimum wage increase.**

Some conservatives may be concerned that this title contains some *permanent* tax and revenue increases on some taxpayers to “pay for” certain *temporary* tax cuts for other taxpayers. **Additionally, some conservatives may be concerned that the small business tax-cut provisions—\$4.84 billion over eleven years—do not even come close to offsetting the costs of the minimum wage increase—\$16.5 billion for small businesses over five years.** Furthermore, the bill chips away at the capital gains and dividends tax cut (by preventing certain students under age 24 and certain non-students under age 19 from getting the lowest rate available under current law), while effectively increasing interest penalties for certain taxpayers, and accelerating certain quarterly tax payments for corporations.

Revenue Estimate: According to the Joint Committee on Taxation, the minimum wage and tax portion of the conference report of the original Supplemental includes \$4.844

billion in tax relief provisions over eleven years and \$4.899 billion in tax and revenue increases over eleven years, yielding a net tax and revenue increase of \$55 million over eleven years. Private-sector and intergovernmental costs of raising the minimum wage are estimated to be \$18 billion over five years. There is no indication that the revenue estimate is different for the tax portion of this new Supplemental.

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